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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,336	01/06/2006	Kazuhiro Ono	P27943	3742

7055 7590 04/10/2008

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EXAMINER	
ROBERTS, LEZAH	
ART UNIT	PAPER NUMBER
1612	

NOTIFICATION DATE	DELIVERY MODE
04/10/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/535,336	ONO ET AL.	
	Examiner	Art Unit	
	LEZAH W. ROBERTS	1612	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *January 8, 2008*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1 and 3-7*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612

/Lezah W Roberts/
Examiner, Art Unit 1612

Continuation of 11. does NOT place the application in condition for allowance because: Although Sanker does not use glycolic acid in the compositions, the reference suggest using glycolic acid in compositions with the plant extract, therefore it is not unreasonable that one of ordinary skill the art , especially considering glycolic acid was specifically named as suitable for use in the disclosed compositions. In regards to the plant, Sanker uses cranberry compounds in the examples, which indicates it is preferred. Furthermore Applicant recites the term "polyphenols" which encompasses numerous compounds that may obtained from numerous plant sources. In regards to the declaration, the declaration is not commensurate in scope with the instant claims. Applicant discloses using 1 ml of a 5% aqueous solution of Perilla frutescen var. crispa polyphenols, which dissolved 50% of calculus in 105 minutes. Also disclosed is the a 10% aqueous solution of glycolic acid, which dissolved about 50% of dental calculus in 9 minutes. When the polyphenol is used in conjunction with glycolic acid, 50% of the dental calculus was dissolved in 6 minumtes. The claims encompass polyphenols in general in any amount with any amount of glycolic acid. The experiments do not use the same amounts of dental calculus in each of the 3 cases or the same concentration of active ingredient. Furthermore the it is not reported how much dental calculus is present after six minutes for each of the three compositions. Even if the Examiner does acknowledge, the results are unexpected, based on evidence presented, the claims are not commensurate in scope with the results.

In response to Zhu in view of Melman, Zhu suggest using a buffering agent. The art recognizes glycolic acid as a buffering agent. As previously stated in the previous advisory action, Melman teaches glycolic acid as an equivalent to acetic acid and therefore they are interchangable. It would also have been obvious to added one of the acids such as glycolic acid to the compositions of Zhu because they have antibacterial activity. Zhu also teaches buffering agent, which glycolic acid is, thereby suggesting the incorporation of glycolic acid it the compositions. In the case of Melman, every acid does not have to be exemplified in order to show it suitability. In regards to the unexpected result, see comments above.

In response Melman in view of Oriza, as stated above the suitable acids that may be used in the compositions of Melman do not all have to be exemplified. Compositions comprising glycolic acid are still encompassed by the reference. The suggestion to use glycolic acid comes from Melman specifically naming the acid as one suitable to use instead of or in combination with acetic acid. The combination of the two reference is supported by cited precedent, which supports it is obvious to combine two compositions known to be used for the same purpose (See Final Office Action mailed July 9, 2007). See comments above in regards to the unexpected results.